

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES SECURITIES AND :
EXCHANGE COMMISSION, :
Plaintiff, : Civil Action
v. : No. 1:20-cv-01529-MSN-JFA
CHRISTOPHER CLARK, : December 13, 2021
et al., : 10:15 a.m.
Defendants. :
..... :
..... :

DAY 3 - MORNING SESSION
TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE CLAUDE M. HILTON,
UNITED STATES DISTRICT COURT JUDGE

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1 **MORNING SESSION, DECEMBER 13, 2021**

2 (10:14 a.m.)

3 MR. CUMMINGS: Yes, Your Honor. How are you this morning,
4 Judge?

5 Judge, I wanted to argue a Rule 50 motion for judgment.

6 THE COURT: Can you take your mask off?

7 MR. CUMMINGS: Pardon? Oh.

8 A Rule 50 motion for judgment based on the evidence so far
9 from the government. First of all, there's no positive direct
10 evidence that there was a tip of material insider information.
11 The government's evidence thus far is speculative. There are
12 circumstances that point to the fact that the two gentlemen
13 involved in this case were brothers-in-law. There's absolutely
14 no evidence that Mr. Wright provided Mr. Clark any insider
15 information. The evidence so far from Mr. Clark who was on the
16 witness stand for two days -- the better portion of a day
17 explains his thesis, basically, based on the bullish market, and
18 that he'd been trading in CEB since 2008. It's not a situation
19 where he makes one trade at the last minute and he's never made
20 trades before. He's a seasoned investor.

21 So you have absolutely nothing, I don't think, Judge, that
22 you can hang your hat on to let this case go forward. I don't
23 think it should go to the jury based on the fact, and we've
24 listened to two days of testimony. There's not a document in
25 evidence, there's not any testimony in evidence, that establishes

1 beyond a preponderance of the evidence or even close to a
2 preponderance of the evidence that a tip of insider information
3 occurred. It's as simple as that, Judge. And I don't think I
4 need to go through chapter and verse of every witness who
5 testified. We all heard the testimony, and basically, they've
6 established nothing in terms of insider information being
7 transferred. What they have is an impression that Mr. Clark made
8 trades that were profitable, out of cash calls, puts. He had
9 been doing that kind of thing since 2008, and there's no evidence
10 at all that Mr. Wright gave him a tip. In fact, on December 9th,
11 when Mr. Clark started making his trades, the evidence was clear
12 that Mr. Wright wasn't informed, and wasn't informed until
13 December 15th when he got back from London. So he's making out
14 of cash call -- out of cash calls, I think \$65 was the strike
15 price, on December 9th before Mr. Wright even knew there had
16 been -- or there was going to be a merger in the offing. And
17 they didn't call Mr. Wright. So where are we with their
18 evidence? I just think as a matter of law, you don't have enough
19 here to send it to the jury. It's a simple argument, Judge,
20 based on the evidence we all heard. Thank you.

21 MR. MAHER: Your Honor, first of all, under Rule 50 of the
22 standards, a reasonable jury would not have a legally sufficient
23 basis to find for the SEC. That is obviously not the case here.
24 While counsel says there's no evidence, what he means is, there's
25 no direct evidence. But in an insider trading case, the case law

1 is clear. Circumstantial evidence is a totally sufficient basis
2 for judgment.

3 Now here the circumstantial evidence is overwhelming.
4 There is highly suspicious trading, not just in December of 2016,
5 but throughout the preceding decade for Mr. Clark. That trading
6 is preceded again and again by extensive communications between
7 Clark and a high-level corporate executive at CEB who knew about
8 the inside information. That trading in December and January was
9 followed by sweeping efforts to conceal the misconduct.

10 Now, there's no dispute, first of all, this trading was
11 highly risky. Clark and Nevins were the only ones engaged in the
12 trading. The trading was a complete reversal of Clark's practice
13 of betting that CEB was going to go down over the preceding
14 decade. Just weeks before the merger, all of a sudden he's
15 betting CEB's stock price is going to suddenly go up. There's no
16 dispute he made huge profits again and again on CEB while just
17 being an average investor in other stocks he was investing in.
18 There's no dispute he told his son to trade on January 4th, 2017,
19 literally the day before the merger was announced.

20 Mr. Clark's vague, ever-shifting explanations, none of
21 those were actually provided to the FBI when they asked him in
22 October of 2017. All of those explanations, imprecise and muddy
23 and unclear, inconsistent with this trading as they are, they're
24 all new, and they've been invented since then.

25 There's also literally no explanation for Mr. Clark's July

1 2015 trading where he opened up a credit line, took out \$15,000,
2 and suddenly bought a ton of options immediately after speaking
3 with Mr. Wright, who was the head of the bookings team at CEB,
4 only to have, a couple days later, CEB announce that it had a
5 surprise bad bookings quarter driving the stock down.

6 Now, there's no dispute whatsoever that Clark and Wright
7 interacted extensively in December -- November, December,
8 January; the relevant time period. There's no dispute that
9 Mr. Wright got a personal benefit under the law by giving a tip
10 to a trading relative and friend, and also, as the exhibits will
11 show and Mr. Wright's testimony will make clear, a decade of
12 Mr. Clark helping Mr. Wright with real estate matters, including
13 in December of 2016 and January of 2017 when he was helping
14 Mr. Wright sell his condo.

15 There's no -- there is enormous evidence that Mr. Wright
16 knew about the merger before December 9th. We heard Mr. Anschutz
17 talk about they had e-mails concerning a change in control on
18 November 3rd. We heard Mr. Anschutz talk about their close
19 relationship. We heard Mr. Anschutz talk about the fact that it
20 was their practice to keep confidential CEB information and share
21 it with one another in violation of CEB company policies, a
22 practice they continued even after they both left CEB, as I'm
23 sure we'll hear from Mr. Wright today.

24 There was also in the record at least two e-mails where
25 Mr. Wright claimed to have knowledge of the merger in November of

1 2016, and, if Mr. Wright testifies, I'm sure we'll see those
2 today as well. The bottom line, the jury has heard extensive
3 testimony and absolutely should be allowed to evaluate the
4 contrasting explanations of the witness's truthfulness to
5 determine the facts in this case. Thank you, Your Honor.

6 THE COURT: What e-mails do you use to say that?

7 MR. MAHER: I'm sorry?

8 THE COURT: What e-mails are there that say that he
9 mentioned a merger?

10 MR. MAHER: So exhibits --

11 THE COURT: Before December. Because your witness,
12 Mr. Anschutz, testified that he didn't tell Wright until -- in
13 December when he came back from England, if I'm correct.

14 MR. MAHER: That is correct, Your Honor. That is a fair
15 characterization of Mr. Anschutz's testimony.

16 Let me say two things. One is, we think he's not being
17 truthful. I think that his testimony is undermined by the fact
18 that the two of them on November 3rd, 2016, exchanged e-mails
19 concerning the effects of a changed control at CEB. It's also
20 undermined just in the record by Mr. Wright's representations to
21 employers, that he was working on the merger in November of 2016.

22 It's also undermined by Mr. Anschutz's and Mr. Wright's
23 practice over the years of keeping and exchanging confidential
24 CEB information, a clear violation of CEB company policies.
25 There's every reason to think, given the extent of their

1 relationship, the frequency of their communications, that
2 Mr. Anschutz informed Mr. Wright about the merger, the final
3 evidence of which is that following Mr. Wright's extensive
4 communications with Mr. Clark, you can see Mr. Clark's, I mean,
5 ludicrously implausible trading take place in December and
6 January.

7 THE COURT: All right.

8 MR. MAHER: Thank you.

9 THE COURT: Do you have anything else you'd like to say?

10 MR. CUMMINGS: You put your finger right on our point. He
11 didn't know until December 12th, 2016, that the merger was in the
12 offing.

13 Everything else is smoke and unclear, and I don't think
14 they shook Mr. Anschutz's testimony at all. And if we have to go
15 forward, we're probably going to be in a position to put
16 Mr. Wright on the witness stand, and I'll raise this motion again
17 at the end of the case.

18 THE COURT: Well -- okay. There's no question that the
19 government can pursue this case and the case of insider trading
20 on circumstantial evidence. There obviously is no direct
21 evidence, and you admitted that in the opening statement. What
22 I'm having trouble doing is coming up with any circumstantial
23 evidence that would justify a finding that Mr. Clark got insider
24 information and took some action on it. We talk about highly
25 suspicious trading; that's not the evidence. The evidence is

1 that Mr. Clark engaged in trading in puts and calls for a
2 considerable period of time, perhaps since 2008, but -- I don't
3 remember the exact date -- but over a long period of time he has
4 been involved in buying and selling this stock, according to the
5 evidence, and he's done it with puts and calls. Well, you can
6 characterize puts and calls as highly suspicious behavior,
7 perhaps. Most investors don't get involved in that risky kind of
8 trade. But Mr. Clark was doing it long before you alleged he got
9 some insider information, and I can't see where that provides you
10 with any implication that he at some point in time got insider
11 information that he needed to take some action.

12 You put on your own witness, Mr. Anschutz, who said that
13 he didn't tell Mr. Wright anything about the merger until in
14 December when he came back from England. Mr. Clark was already
15 involved in buying and continuing to buy the options for this
16 company. I don't see where there's any evidence that anything
17 changed when you allege he got insider information. He didn't
18 start doing anything new. He continued just the same course on
19 through. And where is any evidence that he got insider
20 information to do this?

21 MR. MAHER: Your Honor, if I could address that. First of
22 all, Mr. Clark was getting insider information ahead of his
23 preceding quarterly trading.

24 Now, the evidence on that is twofold. One is, he had an
25 improbable success rate on that trading. You heard our expert

1 talk about when you buy out-of-money calls, there's four things
2 that can go wrong, there's only one thing that can go right.
3 It's not a coin flip, yet Mr. Clark again and again and again got
4 it right just trading ahead of those quarterly trades. In fact,
5 he predicted the stock price 14 out of 17 times in terms of the
6 direction it was going to go. Those trades were preceded by
7 calls with Mr. Wright. Mr. Wright is the head of the bookings
8 team. He's a senior finance officer. There's no dispute he had
9 that inside information. So it's not just that Mr. Clark was
10 doing the trading -- his success rate is extraordinary. It
11 defies any rational explanation, except that he had an
12 information advantage.

13 The other piece to recognize is that his trading itself,
14 it wasn't just that he was engaging in puts and calls, he was
15 doing things to finance it like opening up credit lines,
16 borrowing money, mortgaging his car. His practices in connection
17 with that trading also suggest that it's someone who's trading
18 with an information advantage; the kind of evidence that a jury
19 should absolutely be allowed to decide.

20 And let's not forget, Your Honor, that Mr. Clark and
21 Mr. Nevins simultaneously, when asked about this, their trading,
22 by the FBI, both lied. What are the chances, Your Honor, that
23 two gentlemen who traded honestly and fairly would simultaneously
24 at the same moment lie to the FBI about the basis for their
25 trading? So I just want to reiterate, his history of trading

1 also reveals having an information advantage. It is totally
2 consistent with having bet that CEB was going down for years.
3 Again and again and again he's making money by betting the stock
4 price is going down. The first time he turns himself around and
5 pulls an investing 180, starts buying calls, wouldn't you know
6 it, just a couple of weeks later CEB announces a merger.

7 Again, the pattern of trading, the specifics, the
8 particulars, and the lies following the trading absolutely
9 support a strong circumstantial case that a jury, under Rule 50,
10 should be allowed to evaluate. It is absolutely, under the
11 cases, a legally sufficient basis for a judgment.

12 THE COURT: All right.

13 MR. CUMMINGS: Just briefly, Judge. The Nevins piece that
14 he talked about is a nothing burger.

15 The Nevins piece is -- he explained his trading to the FBI
16 agent. He didn't lie about his trading. And they talked about
17 Bill Wright being a part of CEB. What Nevins lied about and what
18 Mr. Clark had maybe lied about, they were protecting each other
19 because he heard about \$50,000 cash that he presumed to be in a
20 duffel bag, and that's what the FBI thought was the payoff to
21 Mr. Wright. Well, it was a nothing burger. It didn't happen.
22 Nevins went back and said, I lied, I didn't know what was going
23 on with my dad, I was trying to protect him. Mr. Clark said, I
24 was trying to protect my son. It had nothing to do with the
25 trades. They dropped the case against Nevins. They've taken no

1 enforcement action against Nevins. He still has his earnings
2 from those trades. He's out of the case.

3 The success rate that he points to justifies what you're
4 talking about. He was successful 14 out of 17 times. That means
5 he's a pretty good trader. He still failed at least three times,
6 lost money on three times, was wrong three times.

7 And you've -- Judge, you've hit the thing. He's been
8 doing this for years. The circumstantial evidence -- we got the
9 direct evidence that he didn't do it from every witness who's
10 testified. But the circumstantial evidence doesn't measure up,
11 Judge. It would be a travesty for the jury to have to decide
12 this case on this weak evidence; that he borrowed money on his
13 car? That he got an allowance on anyway he could use any way he
14 wants that would cover that? He's a mortgage banker. He
15 testified, I use debt. I use debt when I get short on
16 commissions. But he still made \$340,000 that year.

17 THE COURT: Well, I find, in regard to the trading, I
18 don't think there's anything suspicious about his trading.
19 There's nothing in evidence that would show that there's
20 something suspicious about his trading. You know, you can say
21 he's a little more successful, maybe, than the ordinary person
22 would be, but the ordinary person doesn't mess with puts and
23 calls. The fact that he's been a little more successful and
24 didn't lose money, I don't think that tells us anything.

25 As far as the lies to the FBI, I believe Counsel's right

1 about the fact that he only lies to the FBI when the issue was
2 raised about his son. Otherwise, he seemed to be perfectly
3 honest with the FBI about what he had done and what he didn't do,
4 and what he told the FBI would comply with the evidence that
5 we've heard in this case.

6 As far as his finances are concerned, I don't see anything
7 that's a problem about his finances. I mean, you could quibble
8 how somebody raised a few dollars, but this wasn't a man who was
9 desperate for money. At all times during this entire situation
10 and before, his assets far exceeded his liabilities. That's
11 just -- I don't see that there's anything here to go forward.
12 It's just a matter of speculation. I mean, the government can
13 speculate that he made a little too much money, he was a little
14 too successful or more successful than he ought to be, so
15 therefore he's getting insider information, but there's no
16 evidence of it. I mean, we've got phone calls and e-mails with
17 he and his brother-in-law, but obviously he's communicating with
18 his brother-in-law. He said they weren't all that close, but
19 that doesn't mean they didn't talk and didn't do things together
20 and have obligations together and that sort of thing. Of course
21 he would talk to his brother-in-law, and vice versa.

22 So, there's just simply no circumstantial evidence here
23 that gives rise to an inference that he received the insider
24 information, as has been alleged here. And I think it's my duty
25 to grant the motion for a directed verdict -- not a directed

1 verdict, but more of a judgment as a matter of law, and the
2 judgment will be entered in favor of the defendant.

3 MR. MAHER: Your Honor, we just want to say a few things.
4 One would be, we invite the Court to allow us to brief the issue
5 before you make a decision. But if not --

6 THE COURT: You've already argued it. There's no reason
7 to do anything further.

8 MR. MAHER: Okay. And then, yes, you just --

9 THE COURT: I understand your argument. I just disagree
10 with it.

11 MR. MAHER: And that's fine, Your Honor. And so the SEC,
12 just for the record, also wants to -- I'm not sure if we need to
13 object to preserve our rights for appeal, but just wanted to get
14 that on the record. That's all.

15 THE COURT: That's fine.

16 MR. MAHER: Okay.

17 THE COURT: All right. Thank you, all. Marshal, you can
18 excuse the jury. Tell them what I've done and excuse the jury.

19 THE COURT SECURITY OFFICER: Let them go?

20 THE COURT: Let them go. The case is over.

21 MR. CUMMINGS: Judge, I --

22 THE COURT: I've decided the case. It's over.

23 MR. CUMMINGS: Judge, I -- they sat through two days of
24 testimony. Just as a matter of comity, I think you should invite
25 them in and just let them know what you did. Just two sentences.

1 It's your court. I don't mean to be --

2 THE COURT: Well, I don't see any reason to do that. I
3 mean, I -- the marshal can tell them what I did just as well as I
4 can tell them what I did.

5 MR. CUMMINGS: Thank you, Judge.

6 THE COURT: I don't understand the point.

7 MR. CUMMINGS: Thank you, Judge. Appreciate it.

8 THE COURT: All right. All right. I'm going to enter an
9 order returning the exhibits to you all.

10 MR. CUMMINGS: Do you want us to pick those up today, get
11 them out of here?

12 THE COURT: The clerk does.

13 MR. CUMMINGS: Thank you.

14 THE COURT: All right. Okay. We'll adjourn now until
15 10:00 tomorrow morning.

16 (Proceedings adjourned at 10:35 a.m.)

17

C E R T I F I C A T E

19 I, Scott L. Wallace, RDR-CRR, certify that
20 the foregoing is a correct transcript from the record of
proceedings in the above-entitled matter.

21

/s/ Scott L. Wallace

12/13/21

22

Scott L. Wallace, RDR, CRR
Official Court Reporter

Date

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